

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 14, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEXIS JOEL GARCIA PALOMINO (4)
and MARCIAL BRAVO ZAMBRANO (20),

Defendants.

No. 4:15-CR-06049-EFS-4
4:15-CR-06049-EFS-20

CASE MANAGEMENT ORDER

The U.S. Attorney's Office (USAO) filed the Second Superseding Indictment in this matter on December 6, 2016. ECF No. 105. Defense counsel Jeffrey Scott Niesen appeared for Defendant Palomino on April 4, 2018, and defense counsel Walter Ayers appeared for Defendant Zambrano on May 25, 2018. At the May 29, 2018 pretrial conference, the Court indicated that Defendants Palomino and Zambrano, having only been recently brought into custody in the District, would be subject to a trial date in March 2019 with corresponding pretrial deadlines. The Court further instructed the parties to meet and confer and then file a joint status report with recommended dates and deadlines.

Having considered the parties' proposed case schedule and deadlines, ECF No. 814, the Court now enters the following Case Management Order, which sets forth the deadlines, hearings, and requirements the parties will observe in this matter. To the extent

1 this Order conflicts with any previously entered orders in this matter,
2 this Order shall govern, but only as to Defendants Palomino (4) and
3 Zambrano (20). The Court will grant relief from the requirements in
4 this Order only upon motion and good cause shown.

5 **IT IS HEREBY ORDERED:**

6 **1. Emailing the Court.** Where this Order requires counsel to
7 email documents to the Court, all documents shall be attached
8 to the email in Microsoft Word (.doc/.docx) or rich-text
9 (.rtf) format. The subject line of each email shall be
10 formatted as follows:

11 **[Case No.]; [Case Name]; [Title of Document]**

12 (e.g.: 17-CR-9999-EFS; USA v. Doe; Trial Brief)

13 **2. CM/ECF Training.** The Eastern District of Washington uses
14 electronic filing through CM/ECF. Counsel must contact the
15 Clerk's Office to arrange CM/ECF training within 30 days of
16 appearance in this case or be otherwise experienced in the
17 use of CM/ECF either in the Eastern District of Washington
18 or another district.

19 **3. Discovery**

20 **A.** All discovery documents must be Bates-stamped with a
21 unique identifier and must be produced digitally in a
22 text-searchable format. The Court will grant relief
23 from this requirement only in exceptional
24 circumstances, upon motion and good cause shown.

25 **B.** Pursuant to Eastern District of Washington Local
26 Criminal Rule 16, the Court presumes a defense request

1 for discovery under Federal Rule of Criminal Procedure
2 16 for **documents and objects**, Fed. R. Crim. P.
3 16(a)(1)(E), **reports of examinations and tests**, Fed.
4 R. Crim. P. 16(a)(1)(F), **AND expert witnesses**, Fed. R.
5 Crim. P. 16(a)(1)(G), and orders these items to be
6 disclosed. Therefore, the Court imposes a reciprocal
7 duty on defense counsel to provide discovery under Rule
8 16(b)(1)(A)-(C) **for each of the above categories**.
9 Reciprocal discovery must be timely provided and
10 supplemented **not later than seven days** prior to the
11 pretrial motions deadline. Defendants who do not wish
12 to invoke reciprocal discovery obligations must file a
13 notice with the Court and with opposing counsel prior
14 to accepting discovery from the Government.

15 **C.** The Court further presumes a request for discovery and
16 disclosure under Federal Rules of Evidence 404(b),
17 608(b), and 609, *Brady v. Maryland*, 373 U.S. 83 (1963),
18 *Giglio v. United States*, 405 U.S. 150 (1972), *United*
19 *States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), and
20 their progeny. These items are ordered to be disclosed.

21 **D.** For those discovery matters ordered to be disclosed by
22 this Order, a party shall not file a motion seeking
23 such discovery, unless the disclosing party fails to
24 timely produce such discovery.

25 **E.** Any party seeking discovery or disclosure not otherwise
26 provided for in this Order, or discovery that was

ordered by this Order and not timely provided, shall file a motion that states the specific materials sought, provides the legal authority for the specific request, and certifies that the movant has in good faith conferred or attempted to confer with the opposing party in an effort to obtain the discovery or disclosure without court action.

4. Expert-Witness Summaries

A. Each party shall produce to opposing counsel all summaries of its expert-witness testimony for which disclosure is required under Federal Rule of Criminal Procedure 16, by the deadlines set forth below:

USAO's Experts: January 22, 2019

Defendants' Experts: January 26, 2019

USAO's Rebuttal Experts: January 29, 2019

Also by the applicable deadline, counsel shall email an electronic copy of the summary to the Court at SheaOrders@waed.uscourts.gov and shall simultaneously file a Notice of Compliance with this requirement.

B. All summaries of expert witness testimony must conform to Federal Rule of Criminal Procedure 16 and applicable case law interpreting that Rule. The Court will not permit an expert witness to testify about opinions that are not explicitly expressed in that expert's summary. *See, e.g., United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

1 C. A party is not permitted to call more than two expert
2 witnesses on any issue, except with permission of the
3 Court. L.R. 43(a)(3).

4 **5. Motions Practice**

5 **A. Generally.** By no later than **January 29, 2019**, all
6 pretrial motions – including discovery motions, *Daubert*
7 motions, and motions in limine – must be filed and
8 served. See Fed. R. Crim. P. 12(c). All motions shall
9 either be: (i) noted for hearing without oral argument
10 14 days after filing, or (ii) noted for hearing with
11 oral argument at the pretrial conference. Responses
12 and replies to motions must be filed in accordance with
13 Local Rule 7.1.

14 **B. Expedited Hearing.** Any party seeking an expedited
15 hearing on a time-sensitive matter must file a motion
16 to expedite that (i) demonstrates good cause, (ii)
17 states the position of the opposing party to the motion,
18 and (iii) sets a date of hearing that is no less than
19 **seven days** after the motion's filing. Should the motion
20 to expedite require more immediate judicial attention,
21 the motion shall establish the necessity for an
22 immediate hearing, and the filing party shall notify
23 chambers staff of the motion.

24 **6. Trial Continuances**

25 **A. Motion Deadline.** All motions to continue the trial
26 must be heard before or at the pretrial conference.

Any motion to continue trial made after the pretrial conference has occurred will not be granted absent exceptional circumstances.

B. Procedure. Before filing a motion to continue, counsel shall first contact the Courtroom Deputy at (509) 943-8172 to obtain new pretrial conference and trial dates consistent with the length of the requested trial continuance. Thereafter, counsel shall confer with opposing counsel regarding new case management deadlines consistent with the new pretrial conference and trial date. **All motions to continue must include new proposed case management deadlines (either joint or individual) to ensure the to-be-imposed deadlines are best suited to this case.**

C. Statement of Reasons. Pursuant to 18 U.S.C. § 3161, if the Defendant seeks a continuance, a Statement of Reasons in support of the motion to continue must be filed contemporaneously with the motion.¹ The Statement of Reasons must (i) be signed by the Defendant, (ii) be signed by a certified translator, if applicable, and (iii) indicate the latest date upon which Defendant is willing to proceed to trial.

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¹ The Court's Statement of Reasons template can be found on the Eastern District of Washington's public website: www.waed.uscourts.gov.

1 **7. Pretrial Conference**

2 **A.** A Status Conference is hereby **SET** for **Tuesday, December**
3 **11, 2018 at 10:00 a.m. in Richland.**

4 **B.** The Pretrial Conference remains **SET** for **Tuesday, March**
5 **5, 2019, at 9:00 a.m. in Richland.** At this hearing,
6 the Court will hear **ALL** pretrial motions.

7 **C.** All pretrial conferences are scheduled to last no more
8 than **30 minutes**, with each side allotted **15 minutes** to
9 present their own motions and resist motions by
10 opposing counsel. If any party anticipates requiring
11 longer than 15 minutes, that party must notify the
12 Courtroom Deputy at least seven days prior to the
13 hearing. **Any party who fails to provide this notice**
14 **will be limited to 15 minutes.**

15 **8. Confidential Informants (CIs).** By no later than **March 8,**
16 **2019,** the USAO shall disclose to Defendants the identity of
17 any CIs used in the case, as well as any *Giglio* information,
18 and shall advise Defendants at that time whether any CI so
19 identified is willing to be interviewed by defense counsel.

20 **9. Grand Jury Transcripts.** By no later than **March 8, 2019,** the
21 USAO shall produce copies of the grand jury transcripts for
22 any witness it intends to call at trial.

23 **10. Exhibit Lists**

24 **A.** By no later than **March 14, 2019,** each party shall file
25 a list of exhibits the party intends to introduce at
26 trial. Each party shall also email copies of their

exhibit list to the Court at SheaOrders@waed.uscourts.gov. The parties shall provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 01/01/2016. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

B. The USAO shall consecutively number its exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting "x" for each Defendant's assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

11. Witness Lists. By no later than **March 14, 2019**, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any CI the**

1 **USAO intends to call to testify.** Each party shall email a
2 copy of its witness list to the Court at
3 SheaOrders@waed.uscourts.gov.

4 **12. Witnesses Requiring Counsel.** By no later than **March 14, 2019**,
5 each party must advise the Court of any witness whose
6 anticipated testimony may warrant the exercise of his/her
7 rights under the Fifth Amendment and whether the witness
8 requires the appointment of counsel.

9 **13. Requested Voir Dire, Trial Briefs, Proposed Jury**
10 **Instructions, and Verdict Form.** By no later than **March 14,**
11 **2019**, each party shall file requested voir dire, a trial
12 brief, proposed jury instructions, and verdict form, in
13 accordance with the requirements below. Each party shall
14 email copies to the Court at SheaOrders@waed.uscourts.gov.

15 **A. Requested Voir Dire.** The parties may request that the
16 Court include specific questions during the Court's
17 standard voir dire. Requested voir dire shall not
18 duplicate information elicited in the Clerk's Office
19 Jury Questionnaire and the Court's Criminal Jury Trial
20 Procedures Letter.

21 **B. Trial Briefs.** Trial briefs shall not exceed 20 pages
22 without prior Court approval, upon motion and good
23 cause shown. LR 39.1.

24 **C. Proposed Jury Instructions and Verdict Form.** Jury
25 instructions shall (i) address issues that are unique
26 to the case, and (ii) include instructions regarding

1 the elements of each charge or defense. If a Ninth
2 Circuit Model Jury Instruction exists for a particular
3 charge or defense, the parties shall provide the model
4 instruction or shall submit argument as to why the
5 instruction is inadequate or no longer supported by
6 law. Proposed jury instructions shall be accompanied
7 by a proposed verdict form. **The parties must confer**
8 **to develop joint proposed jury instructions and the**
9 **verdict form.** The Court will only accept an individual
10 party's proposed jury instructions on those
11 points/issues upon which the parties could not agree,
12 and only if the party's memorandum accompanying the
13 individually proposed instructions sets forth the legal
14 authority and justification for why the instructions
15 are necessary.

16 **14. Trial Notices.** By no later than **March 14, 2019**, each party
17 shall file a notice that indicates the amount of time
18 requested for voir dire and for opening statement. In
19 addition, defense counsel must indicate if his/her client
20 waives presence at sidebar and jury questions. If a defendant
21 waives presence at sidebar and jury questions, a waiver
22 signed by the defendant must be filed with the Court.

23 **15. Exhibits**

24 **A. Exchange of Exhibits.** By no later than **March 15, 2019**,
25 each party must provide to all other parties a copy of
26 the exhibits it intends to introduce at trial. The

exhibits must be provided in digital format, unless the parties agree otherwise.

B. JERS

i. The Court utilizes the Jury Evidence Recording System (JERS), a system that makes evidence digitally available to the jury during deliberations. Counsel shall promptly consult the Court's JERS Information web page to acquaint themselves with JERS procedures and to ensure they acquire, retain, and provide evidence to the Court in the necessary format.²

ii. By no later than **March 15, 2019**, each party who intends to introduce evidence at trial must supply its JERS exhibits to the Courtroom Deputy in the manner and format set forth in the JERS - Basics for Lawyers document. Counsel should pay special attention to the file naming convention and include a PDF placeholder for any audio, video, and/or physical exhibits intended for use at trial. Counsel may contact the Courtroom Deputy at (509) 943-8172 with any questions.

C. Exhibit Binders. By no later than **March 18, 2019**, each party must provide to the Court two Bates-stamped copies – or, in the case of physical exhibits, a

² See <http://www.waed.uscourts.gov/jers-information>.

photograph or other reproduction – of all trial exhibits the party intends to introduce at trial. **All trial exhibits shall be placed in a three-ring binder, organized sequentially by exhibit number, and marked with labelled tabs for easy reference.** The exhibit binders provided to the Court will not be available for use by the attorneys at trial.

16. Technology Readiness Meeting. By no later than **March 18, 2019**, any party seeking to offer video or audio evidence at trial must meet with Court staff at the location of the trial to verify compatibility with the Court's presentation systems. The parties shall contact the Courtroom Deputy at (509) 943-8172 to arrange this meeting.

17. Final Pretrial Conference. Counsel and Defendants shall be prepared to meet with the Court one hour prior to commencement of the trial; a Final Pretrial Conference is **SET** for **Monday, March 25, 2019**, at **9:00 a.m.** in Richland.

18. Trial. The jury trial remains **SET** for **Monday, March 25, 2019**, at **10:00 a.m.** in Richland.

19. Summary of Deadlines

PRETRIAL CONFERENCE	Tuesday, September 18, 2018 9:00 a.m. – Richland
STATUS CONFERENCE	Tuesday, December 11, 2018 10:00 a.m. – Richland
Reciprocal discovery provided and supplemented	January 22, 2019
Rule 16 expert summaries produced to other parties and emailed to Court: USAO's Experts Defendants' Experts USAO's Rebuttal Experts	January 22, 2019 January 26, 2019 January 29, 2019

All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions in limine, filed with the Court	January 29, 2019
PRETRIAL CONFERENCE <i>Deadline for motions to continue trial</i>	Tuesday, March 5, 2019 9:00 a.m. – Richland
CIs' identities, <i>Giglio</i> disclosures, and willingness to be interviewed disclosed to Defendants (if applicable)	March 8, 2019
Grand jury transcripts produced to Defendants	March 8, 2019
Exhibit and witness lists filed and emailed to the Court	March 14, 2019
Notice of any witness likely to exercise Fifth Amendment rights and/or require appointed counsel filed with the Court	March 14, 2019
Trial briefs, requested voir dire, and proposed jury instructions and verdict forms filed and emailed to the Court	March 14, 2019
Trial notices filed with the Court	March 14, 2019
Exhibits delivered to all other parties	March 15, 2019
JERS-compatible digital evidence delivered to the Courtroom Deputy	March 15, 2019
Exhibit binders delivered to the Court	March 18, 2019
Technology readiness meeting (in-person)	March 18, 2019
FINAL PRETRIAL CONFERENCE	Monday, March 25, 2019 9:00 a.m. – Richland
JURY TRIAL	Monday, March 25, 2019 10:00 a.m. – Richland

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals Service.

DATED this 14th day of June 2018.

s/Edward F. Shea

EDWARD F. SHEA
Senior United States District Judge